

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.602 of 2018

1.Shyamala
2.M.V.Deepa
3.M.V.Nithiya
4.M.V.Dilli Babu

...Appellants/Petitioners

vs

The Managing Director
Metropolitan Transport Corporation
Limited, Chennai-600 002

...Respondent/Respondents

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 13.08.2012 made in M.C.O.P.No.3722 of 2009 on the file of Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai.

For appellants : : Ms.Ramya Rao

for Respondent : : Mr.S.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellants/claimants, challenging the Judgment and decree dated 13.08.2012 made in M.C.O.P.No.3722 of 2009 on the file of Motor Accident Claims Tribunal, XV Additional Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their litigative status before the Tribunal. The case of the petitioner is that on 23.10.2009 at about 17.45 hours, while the deceased M.Venkateswara Rao was boarding the respondent bus bearing Reg.No.TN-01-N-3035 at Murugan Koil Salai, near Kundrathur Bus Stand, the driver suddenly started the bus resulting in the petitioner falling down and the left rear side wheel ran over the deceased resulting in his death. At the time of the accident, the deceased was aged 48 years and by working as Security Assistant in a private agency, was getting Rs.5,500/- per month. The accident occurred only due to

negligence of the Respondent Transport Corporation bus driver. Hence, the petitioners who are the wife and children of the deceased seek a sum of Rs.10,00,000/- as compensation from the respondent.

3. On the other hand, opposing the claim of the petitioner, the respondent corporation contends that the accident did not occur in the manner alleged by the petitioners. On the fateful day, at 17.35 hours, their bus was nearing Kundrathur Bus terminus, and even before the bus came to halt, a male passenger tried to get into the running bus and as he lost grip of the handle in the steps, fell down and suffered fatal injuries. The accident occurred only due to the negligence of the deceased. As such, the respondents are not liable to pay compensation. The amount claimed by the petitioners is exorbitant. The respondent sought for dismissal of the petition.

4. Before the Tribunal, the petitioners examined P.W.1 and P.W.2, produced documents Ex.P.1 to Ex.P.6 to prove their claim. On the side of the respondents, the conductor of the bus deposed as R.W.1, but did not produce any documentary evidence. The Tribunal found that the negligence of the bus driver only caused the accident and awarded compensation of Rs.7,10,544/- to the Petitioners. Being not satisfied with the quantum of the award, the Petitioners/appellants have come forward with this appeal.

5. The learned counsel for the Appellants/Petitioners would contend that the deceased was earning Rs.6000/- per month as last drawn salary and Ex.P.5 is the Salary certificate of the deceased and the same was not considered by the Tribunal. Similarly the Tribunal failed to consider the future prospects of the deceased. The Tribunal ought to have awarded 9% interest but failed to do so. Hence, the Appellants sought for enhancement of the award amount, by allowing the appeal.

6. Per contra, the learned counsel for the respondent-Transport Corporation contends that the accident occurred only due to the negligence of the deceased and therefore, the Petitioners are not entitled for any compensation. The amount awarded by the Tribunal itself is on the higher side. Hence, the respondent sought for dismissal of the appeal.

7. The Petitioners examined the eyewitness to the occurrence as P.W.2 and he clearly stated that on 23.10.2009 at about 5.45 p.m, while he was standing in the Kundrathur Bus stand, as the passengers were getting in the respondent transport corporation bus through the front entrance, the driver of the bus without noticing the same, suddenly moved the bus resulting in a male passenger falling down from the front side entrance and the rear wheel ran over the said person and he died in the hospital. Ex.P.3 -FIR is registered against the driver of the transport

corporation bus only.

8. On the other hand, the respondent did not examine the driver of the bus but the conductor of the bus alone deposed as R.W.1. According to him, the deceased tried to get into the bus even before it came to halt and fell down, resulting in his death. It is not clear as to why the conductor if he had witnessed the person was trying to get into the moving bus, failed to prevent the same. Further, the evidence of P.W.2 who is a third party is corroborative evidence of Ex.P.3-FIR. Assuming that the deceased was trying to get into the moving bus, complaint would have been lodged by the conductor of the bus against the said person, but no complaint was lodged. On the other hand, the case was registered against the driver of the bus only. As such, the finding of the Tribunal that the negligence of the bus driver alone caused the accident is just and proper and therefore, the said finding needs no interference. The Petitioners who are the legal heirs of the deceased as per Ex.P.4 contends that the husband of the 1st petitioner and father of the other petitioners was earning Rs.6,111/- by working as Security Assistant in Global Detective Agency Private Limited and his salary certificate is produced as Ex.P.5. There is nothing on record to disprove the same. Hence, the monthly income of the deceased is fixed at Rs.6111/- and the same is rounded off to Rs.6200/-. The deceased was stated to be aged 48 years. As per Ex.P.1-Post mortem certificate, the deceased was aged 48 years. Hence, the age is fixed at 48 and the multiplier to be applied is 13. For the age group of 40 to 50 years, for the person who was earning fixed salary is to be provided 25% of the income towards future prospects. Further, the petitioners being 4 in numbers, 1/4th to be deducted towards personal expenses of the deceased. Thus, the monthly income of the deceased is calculated as under:-

$6200 + 25\% (1550) = 7750$

1/4th to be deducted towards personal expenses (1938)

$7750 - 1938 = 5812$

$5812 \times 12 \times 13 = 9,06,672$

Thus, a sum of Rs.9,06,672/- is awarded under the head "loss of dependency".

Compensation towards conventional heads:-

By applying the Ruling of the Supreme Court reported in 2017 (2) TN MAC 609 (SC) [National Insurance Co.Ltd., Vs. Pranay Sethi and Others], the following amounts are awarded as compensation under conventional heads.

Funeral expenses	- 15,000/-
Loss of estate	- 15,000/-
Loss of consortium	- 40,000/-
Add: Loss of dependency	- 9,06,672/-
Total	= Rs.9,76,672/-

9. The modified award amount passed by this court is as follows:-

Sl .N o.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Loss of dependency	Rs. 6,35,544/-	Rs. 9,06,672/-
2.	Funeral expenses	Rs. 5,000/-	Rs. 15,000/-
3.	Loss of consortium	Rs. 20,000/-	Rs. 40,000/-
4.	Loss of love and affection	Rs. 50,000/-	---
5.	Loss of estate	---	Rs. 15,000/-
	Total	Rs. 7,10,544/-	Rs. 9,76,672/-

10. In the result,

(i) This Civil Miscellaneous Appeal is partly allowed.

The award amount is enhanced to Rs.9,76,672/- from Rs.7,10,544/-.

(ii) The Appellants/Claimants are entitled to a sum of Rs.9,76,672/- (Rupees Nine Lakhs seventy six thousand six hundred seventy two only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate cost;

(iii) The respondent-Transport corporation is directed to deposit the modified award amount before the Tribunal, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The Tribunal shall pass appropriate orders on application filed by the Appellants for disbursement of the award amount. The appellants/claimants are not entitled for interest for the delay period of 1615 days in filing the CMA. The award amount shall be divided in equal proportion to all the four appellants/claimants. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

The XV Additional Judge,
Motor Accident Claims Tribunal,
City Civil Court, Chennai.

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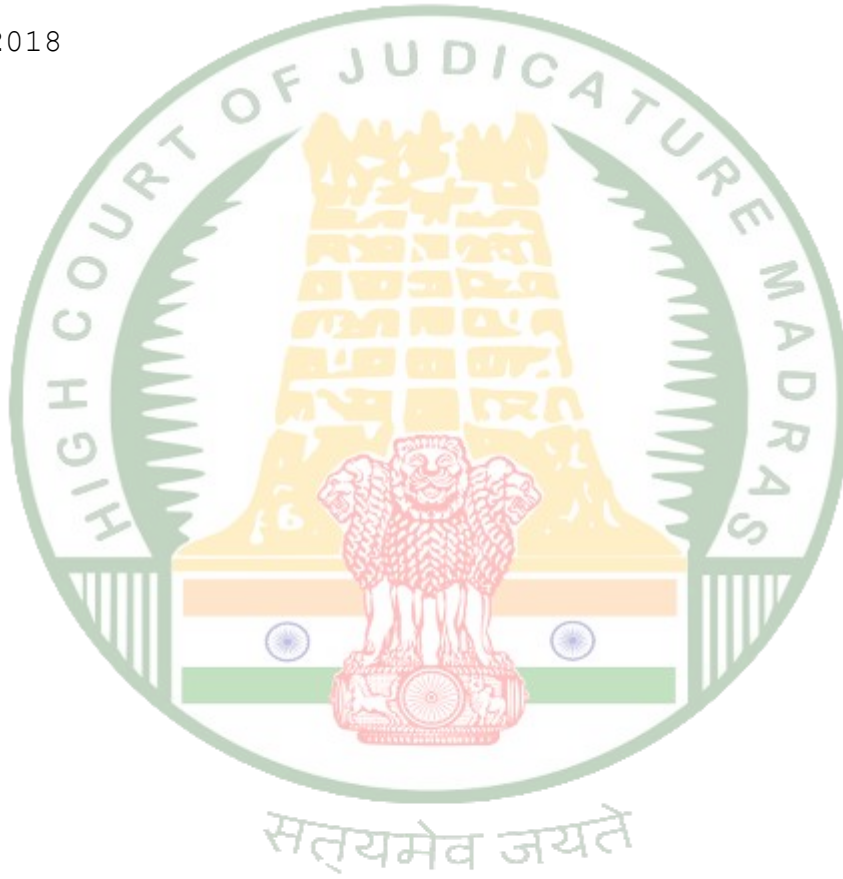
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VR Section,
High Court, Madras.

+1cc to Mr.S.Sivakumar, Advocate sr.no.21310

+1cc to Mr.A.N.Viswanatha Rao, Advocate sr.no.21497

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